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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,716	05/28/2002	Paul A. Davignon	81503	5300

7590 09/24/2003  
KRIEGSMAN & KRIEGSMAN  
665 Franklin Street  
Framingham, MA 01702

EXAMINER

LOPEZ, MICHELLE

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 09/24/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/054,716

Applicant(s)

DAVIGNON ET AL.

Examiner

Michelle Lopez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,7-9,11-14,16 and 17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18 and 24 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☒ Claim(s) 2-6, 10, 22-23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

1. This action is in response to applicants' amendment received on 07/11/03.
2. Claims 15 and 19-21 been canceled.
3. New claim 24 been added.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 12-14 and 16-17 recites the limitation "a transverse cross-sectional width which is greater than its transverse cross-sectional height" in the last two lines of claim 12. There is insufficient antecedent basis for this limitation in the claim. The specification does not describe nor read a transverse cross-sectional width greater than the transverse cross-sectional height.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1,7-9, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Cooper (US Pat. 6,129,206). Cooper discloses the invention substantially as claimed including a connector as a thin and straight filament "15" with a first and a second end cross members "17" and "19" at a first and second end, cross-members with a flat inner surface and a flat outer

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surface (see Fig. 3), a connector "15" formed onto the approximate center of the inner surface of the first cross member, a fastener constructed of plastic (col.3, lines 7-8).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 12-14 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deschenes (US Pat. 6,427,895). Deschenes discloses the invention substantially as claimed including a needle for dispensing a plastic fastener with a flat bottom, a flat sidewall which extend orthogonally, and a flat flange extending orthogonally inward from the sidewall (see Fig.9), a longitudinal-extending bore with a rectangular cross-section "153" (col. 8, lines 36-41), a longitudinally-extending slot "155", and a sharpened tip "57". Deschenes does not specifically state a pair of sidewalls. Moreover, there is no explicit disclosure of a pair of flanges. Examiner takes Official Notice of the well-known act of including a pair of sidewalls as a matter of design choice. Furthermore, it would be obvious to one having ordinary skill in the art to have modified Deschenes' invention including a pair of sidewalls extended orthogonally up from the flat bottom wall in order to allow a thin disk cross-member to be received and travel freely through the central bore. Also, Examiner takes Official Notice of the well-known act of including a pair of flange as a matter of design choice for the purpose of defining a slot extending longitudinally across the length of the needle. Furthermore, it would be obvious to

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one having ordinary skill in the art to have modified Deschenes' invention including a pair of flat flanges in order to define a slot extending longitudinally across the length of the needle allowing the connector to extend within the slot while the cross-member is disposed within the bore.

***Allowable Subject Matter***

7. Claims 2-6, 10, and 22-23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
8. Claims 18 and 24 are allowed.

***Response to Arguments***

9. Applicants' remarks have been fully considered but they are not deemed persuasive.
10. Applicant contends that Cooper does not show or suggest a fastener comprising a flat inner surface and a flat outer surface, wherein the first end of said connector is formed onto the flat inner surface of the first cross member. Examiner asserts that a reference anticipates a claimed invention when all the features are disclosed. In this instance, as can be seen in col. 3, lines 21-26, Cooper's fastener could have alternatively-shaped cross-sections as for example a rectangular shape. It is deemed that rectangular cross-sections "17" and "19" provide a flat inner surface and a flat outer surface, thereby the first end of the connector filament "15" is formed onto the flat inner surface of the first cross member "17".
11. For the reasons above, the grounds of rejection are deemed proper.

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12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

13. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle Lopez whose telephone number is 703-305-8205. The examiner can normally be reached on Monday - Thursday: 8:00 am - 6:00 pm.

15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 703-308-2187. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

16. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

ML



Rinaldi I. Rada  
Supervisory Patent Examiner  
Group 3700